

PERSONNEL

MERIT SYSTEM BOARD

Leaves, Hours of Work and Employee Development

Military Leave

Adopted Amendments: N.J.A.C. 4A:6-1.11

Reproposed: September 20, 2004 at 36 N.J.R. 4200(a)

Adopted: December 1, 2004 by the Merit System Board, Marjorie A. Schwartz, Acting Commissioner, Department of Personnel.

Filed: December 7, 2004 as R.2005 d.20, without change.

Authority: N.J.S.A. 11A:2-6(d), 11A:6-1, 38:23-1, 38:23-4, 38A:1-1, 38A:4-4; P.L.2001, c.351; 10 U.S.C. § 10101, and 38 U.S.C. §§ 4301 et seq.

Effective Date: January 3, 2005.

Expiration Date: June 9, 2008.

Summary of Hearing Officer Recommendations and Agency Responses:

A public hearing on the repropoed amendments was held on October 18, 2004 in Trenton, New Jersey. Elizabeth Rosenthal served as hearing officer. No comments were received on the repropoed amendments at that time, and no recommendations were made by the hearing officer. No written comments were received. The record of the public hearing may be reviewed by contacting Henry Maurer, Director, Division of Merit System Practices and Labor Relations, Department of Personnel, P.O. Box 312, Trenton, New Jersey 08625-0312.

Federal Standards Statement

A Federal standards analysis is not necessary for the adopted amendments to N.J.A.C. 4A:6-1.11, as they meet, but do not exceed, Federal statutory provisions concerning rights of employees who are in the uniformed service. Specifically, the adopted amendments to N.J.A.C. 4A:6-1.11 prohibit an appointing authority from rescheduling an employee's work time to avoid conflict with required military duty. The adoption ensures that the employee's rights under Federal law are protected. See 38 U.S.C. § 4311. Additionally, requirements concerning Coast Guard reservists are reflected pursuant to 10 U.S.C. § 10101.

Full text of the adopted amendments may be found in the New Jersey Administrative Code at N.J.A.C. 4A:6-1.11.

4A:6-1.11 Military leave

[(a) An employee in the career, senior executive or unclassified service, other than a person holding a position for a fixed term or period, who enters the military service in time of war or emergency, or for any period of training, or pursuant to any selective service system, shall be entitled to a leave of absence without pay for the period of such service and three months after discharge. However, if an employee is incapacitated by wound or illness at the time of discharge, such leave shall be extended until three months from recovery but in no event more than two years from date of discharge.

1. During such leave of absence, the employee shall continue to accrue seniority and salary increments, if applicable, in his or her title.

2. No entitlements under this section shall be granted if the separation from military service is by a dishonorable discharge. See N.J.S.A. 38:23-4.

3. For Federal reemployment rights, see 43 U.S.C. § 2021.]

(a) For purposes of this section, a “permanent employee” shall mean:

1. In the career service, an employee who:

i. Has achieved permanent status in accordance with N.J.A.C. 4A:4-1.1;

ii. Is serving a working test period and has permanent status in another title; or

iii. Is serving a provisional appointment and has permanent status in another title.

2. In the unclassified or senior executive service, an employee appointed for an indefinite term.

(b) [An employee in the career, senior executive or unclassified service] Regarding military service for members of New Jersey’s Organized Militia, including the National Guard:

1. A permanent employee or a full-time, temporary employee who has served for one year or more, who is a member of the national guard or other component of the organized militia of the State of New Jersey, shall be entitled to a leave of absence with pay not to

exceed 90 work days in the aggregate in any one calendar year [that he or she is required to engage in active duty or active duty for training.] for any period of Federal active duty, and unlimited paid leave in the case of State active duty. Active duty shall not include inactive duty training such as weekend drills. See N.J.S.A. 38A:4-4. The Adjutant General of the New Jersey Department of Military and Veterans Affairs shall determine the definition of Federal and State active duty. See N.J.A.C. 5A:2-2.1 [(d) for types of required duty]. An appointing authority may not unilaterally reschedule an employee's work time to avoid conflict with military leave. However, an appointing [authorities] authority and an employee may mutually agree to reschedule an employee's work time to [avoid conflict with such required duty] accommodate the employee's military leave.

[1. A leave of absence with pay shall also be granted for other military duty when ordered by the Governor in case of insurrection, breach of the peace, national disaster or imminent danger to public safety.

2. Such leave of absence shall be in addition to the regular vacation allowed such employee. See N.J.S.A. 38A:4-4.]

(c) Regarding military service for reservists other than New Jersey National Guard members:

1. A permanent employee or a full-time, temporary employee who has served for

one year or more, who is a member of the organized reserves of the Army, Navy, Air Force [or] , Marine Corps or Coast Guard of the United States or other affiliated organizations, including national guard units of other states, shall be entitled to a leave of absence with pay [on days on which he or she is required to engage in field training, but only that training which consists of participation in unit training field operations and is a part of the required annual tour of duty in order to be a member of that component.] not in excess of 30 work days in the aggregate in a calendar year when he or she shall be engaged in any period of Federal active duty. Federal active duty shall not include inactive duty training such as weekend drills. See N.J.S.A. 38:23-1. An appointing authority may not unilaterally reschedule an employee's work time to avoid conflict with military leave. However, an appointing [authorities] authority and an employee may mutually agree to reschedule an employee's work time to [avoid conflict with military field training] accommodate the employee's military leave.

[1. A nonpermanent employee serving for one year or longer shall be entitled to a leave of absence with pay not to exceed 30 days in the aggregate in any one year while engaged in field training. A leave of absence without pay shall be granted to a nonpermanent employee serving for less than a year while engaged in field training.

2. Such leave of absence shall be in addition to the regular vacation allowed such employee. See N.J.S.A. 38:23-1 and 38:23-1.1.]

(d) Regarding service and reemployment for all members of the military in time of war or emergency:

1. An employee in the career, senior executive or unclassified service, other than a person holding a position for a fixed term or period, who enters either Federal or State active military service in time of war or emergency, or for any period of training, or pursuant to any selective service system, shall be entitled to a leave of absence without pay for the period of such service and three months after discharge. However, if an employee is incapacitated by wound or illness at the time of discharge, such leave shall be extended until three months from recovery but in no event more than two years from date of discharge.

2. No entitlements under this section shall be granted if the separation from military service is by a dishonorable discharge. See N.J.S.A. 38:23-4.

3. For Federal reemployment rights, see 38 U.S.C. §§ 4301 et seq.

4. To the extent that a member of New Jersey's organized militia, including the New Jersey National Guard, has not exhausted 90 days of paid leave in accordance with (b) above, or a reservist has not exhausted 30 days of paid leave in accordance with (c) above, the member or reservist shall be permitted paid leave in accordance with, as applicable, (b) or (c) above, and also shall be afforded the rights of military members in

accordance with (d)1 through 3 above.

[(d)] (e) An employee is entitled to a leave of absence without pay for such other [national guard, State organized militia or United States reserve] military duty not covered by (b), [or] (c) or (d) above.

[1. During such leave of absence, the employee shall continue to accrue seniority and salary increments, if applicable, in his or her title.]

[2.] 1. At the discretion of the employee, vacation leave, administrative leave and other accrued compensation may be used for such absences.

(f) During any leave of absence pursuant to (b) through (e) above, the employee shall continue to accrue seniority and salary increments, if applicable, in his or her title, and any leave of absence granted to the employee shall be in addition to other time off allowed such employee.

[(e)] (g) For military leave regulations promulgated by the New Jersey Department of [Defense] Military and Veterans' Affairs, see N.J.A.C. 5A:2.